1950

File No. O. Charities/50

Legal Department

A BRANCH

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Subject:—

Opinions under the Treasurer of Charitable Endowment Act,

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File No. O. Charities/50

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C O N T E N T S.

Legal Department Vol. No. O.Charities/1950.

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KAN/6-6.
2 c.

L.D. R.I. No. 864 dated 11.1.1950.

Submitted.

These papers pertain to the transfer of the David Sassoon Industrial and Reformatory Institution from Matunga to Chembur. Messrs. Matubhai, Jamiatram and Madan, Solicitors of the Children's Aid Society, who were consulted in the matter are of the opinion that since the property of the David Sassoon Institution is vested in the Govt. of Bombay, the latter must take an application to the Court under the Charitable and Endowment Act for the necessary sanction for transferring the D.S.I. Institution to Chembur and relieving the Matunga property from the Trust.

L.D. has been requested to confirm whether the above view is correct.

File G.Charities/49 containing the R.L.A's previous opinion in this case (viz. opinion No.276, dated 16.1.1949) cannot be traced. It is for orders whether the Gp: Branch may be requested to trace the file.

Sd/- S.S. 21/2

A.A.S. (Cannot the case be dealth with without the file (G. Charities/49) It ~~x~~ should not have been detained so long).

As pointed out in R.L.A's opinion No.276 dated the 16th January 1949, from G.R.E.D. No. 264 dated the 29th January 1918 and the H.C. decree in suit No. 1137/1912 it appears that the premises of the David Sassoon Industrial and Reformatory Institution at Matunga are held in trust by Government. As trustee it would be for the State of Bombay to file a suit for obtaining sanction of the H.C. for

shifting the said Institution to the new premises at Chembur. The view expressed by the Hon. Solicitors of the Children's Aid Society, at p.91 ante is correct.

Id/- E.P.

A.L.M., Reply may be as at A

Id/- R.T.E. 24/2

H.L.A. Id/- P.M.L. 24/2

U.R. to H.D. No.2632, dated 26-2-60

EAM/6-3.

Submitted with reference to H.D. Note at p.49 ante. It is proposed to take on lease certain property belonging to Shree Kalika Mataji Sansthan at Nadiad for accommodating the Divisional Office of the State Road Transport Corporation. A revised draft lease in this respect was furnished by the Solicitor to Government. As it was proposed to take the property on lease for a period of 50 years a presumption was made by the Solicitor in para. 2 of his note at p.31 ante that the Trustees of the Sansthan have the authority to let out the premises for more than 7 years; otherwise if the Sansthan is a public trust it might be necessary to obtain the prior sanction of the Court. In connection with this the Provincial Motor Transport Controller reports that the Sansthan is entitled to lease any part of its estate for an unlimited period but the agreement will have to be made in the name of Shree Kalika Mataji Sansthan and rent paid to the Sansthan. The Sansthan appears to be a public trust. From this the H.D. has come to the conclusion that the trustees of the Sansthan have no power to lease the premises for a period exceeding 7 years and consequently it would be necessary to ~~k~~ obtain the prior sanction of the Court. The L.D. is requested to advise in the matter.

2. In the absence of a copy of the trust deed it is not possible to give a

definite opinion; but from (b) in the P.M.T.C.'s note at p. 47 ante it appears that the Sansthan has power to lease the premises for any period of time. The trustees will be acting on behalf of the Sansthan and consequently no difficulty as suggested by the H.D. is likely to arise in this case.

Id/- D.W.D. 21/2

Resubd.

A.L.R. inquired what was the significance of letting for a period of more than 3 years (Vide para-2 of the Sol's. U.R. at p.31 ante). The matter was discussed with the Sol. who said he intended to refer to S. 36 (x 2nd para) of the Trusts Act, 1882, which however refers to leasing for a term exceeding twenty-one years. The Act applies only to private trusts.

Id/- D.W.D. 21/2

Id/- R.T.K.

A.L.R. Reply may be as in para 2 of Mr. Deshmukh's note.

Id/- R.T.K. 22/3

R.L.A. P.M.L. 23/2

U.R. to H.D. No.2733, d/ 25-2-55

KAN/6-6.
4 c.

Office of the R.L.A.

In the absence of a copy of the trust deed it is not possible to give a definite opinion; but from (b) in the Provincial Motor Transport Controller's note at page 47 ante it appears that the Sanathan has power to lease the premises for any period of time. The trustees will be x acting on behalf of the Sanathan and consequently no difficulty as suggested by the H.D. is likely to arise in this case.

Id/- P.M.L. 21/2

Remembrancer of Legal Affairs.

U.R. to H.D. No.2733, dated the 25th February 1950.

KAH/6-6.
4 c.

Submitted.

The facts in brief are as follows:-

A certain merchant by name Hussein Cassam Tantwalla, domiciled in Bombay, but who carried on business in Java, died at Rander on 1/10/35 leaving a will dt. 1/11/32, by which he appointed his son, Abdul Kader bin Hussein Kassam Tantawala, his executor. In his will the testator stated that he was entitled to give one third of his estate for charity and set aside certain properties of his estate for charity. His son, Abdul Kader, the executor of the will was directed to make the Wakf deed. The Property in Singapore referred to in the said charitable bequest comprised of certain land and premises at Seylang known as No.539, Seylang Rd. The son proved the will on 16/4/37 in Probate No93 of 1937 in the High Court of Singapore but he did not in fact make out a Wakf deed. On information of the charitable bequest coming to the notice of the Attorney General a report was made to the Governor under the provisions of sec. 4 of the Mohammedan & Hindus Endowments Ordinance by the Board. As a result of such report the Governor made an order that the property should be administered by the Mohammedan & Hindus Endowments Board, Singapore. This act was disputed but the Japanese occupation interrupted the matter hence it was not proceeded with in the courts. The land in question was sold and the proceeds of the sale were invested in War Savings certificates. It appears that the intention of the testator was to benefit his poor and needy relatives in India.

As the amt. of funds meant for charity is not much

the Board has approached Govt. of India with request to have the funds distributed to suitable persons, by a District officer. The Govt. of India by their letter No.D.2399/49-A(N, have enquired of the Govt. of Bombay whether the latter have any objection to the appointment of one of their officers to receive the amts. in question for distribution amongst the poor and needy relatives of the deceased, provided the Singapore Court makes an order to the effect and lays down and approves of details of the scheme regarding how the fund is to be distributed.

Govt. proposes to inform the Govt. of India that the Collector of Surat will look after this work.

The pps. have been forwarded to the A.L.A. presumably for advising whether there is any objection to the procedure proposed to be followed in the distribution of the said funds.

Though a Wakf deed has not been executed in the present case, the fact that the testator set aside grd of his property for the benefit of his poor and needy relatives & this intention was carried into by his son, who made payments to relatives in India, shows that a Wakf has been created in favour of the poor relatives in India. (Seem p.153 of Mulla's Principles of Mohomedan law, 11th edition.) In Mohomed Kuzim V. Syed Abi (1932) 11Pat. 233, 136 I.C. 417, it was held that wakf is a trust for the purposes of sec. 92 of the C.P.C. Hence, it can be said that the funds in question are held by the H. & H. E. Board in trust for a charitable purpose within the meaning of sec. 2 of the Charitable Endowments Act, 1890.

As such, Bombay Govt. can by notfn. in the Official Gazette order that the said funds be vested in the Treasurer of Charitable Endowments for the benefit of the testator's needy and poor relatives in Bombay. Govt. can even settle a scheme for the administration of the amt. under sec. 6 (1) of the Act. But before this can be done, the H. & H. E. Board will have to obtain the permission of the Singapore Court to transfer the said funds, to Bombay.

Id/- S.B. 11/2

KAN/6-6.
4 c.

Office of the R.L.A.:

Administration of the Tantamalla Endowment.

Seen and returned.

The view taken by Deputy Secretary, Revenue Department is correct.

It is clear that the funds are held by the Board and that a Scheme under sections 18-21 of the Mohammedan and Hindu Endowments Ordinance is to be prepared and given effect to by the Courts. Although relief of poverty of the poor relations is a charity in the strict sense of the term, it is for consideration whether Government official like a Collector should be burdened with the administration of such a charity. The Collector will find it very difficult to find the poor relations of the deceased and cater to their needs.

Id/- P.H.L. 1/3

Remembrancer of Legal Affairs.

U.R. to R.D. No. 2582, dated the 2nd March 1950.

KAM/C-C.
4.C.

Office of the R.L.A.

In his letter dated 14th November 1949 the Surgeon General has made the following two proposals in respect of Shree Taloy Mohamad Khan Silver Jubilee and Shah Manchand Hagamchand Eye Hospital at Palanpur :

(1) The Civil Surgeon should assume control of the Eye Hospital;

(2) An Advisory Committee may be appointed and that in addition to the 3 members constituting the Committee the Collector of the district may also be included.

R.L.A. is requested to advise whether the proposals made by the Surgeon General are in order.

2. According to condition 6 of the conditions of the Trust as stated at page 33 ante, the management of the Shri Taloy Mohamad Khan Silver Jubilee and Shah Manchand Hagamchand Eye Hospital shall subject to the control of the State vest in a Committee of Management consisting of following persons :

(1) The Vakeel of Palanpur State or any officer of the State who may be the head of the State Medical Department;

(2) Principle Medical officer in charge of the Hospital;

(3) The donor or his representative.

It is true that since the merger of the Palanpur State in the Bombay State the control over this institution vests in Bombay Government but the words "subject to the control of the State" do not mean power to supersede the Committee of Management. It would only mean power to control the functions of the Committee of Management. To entrust the management of the institution to the Civil Surgeon would mean the

supersession of the Committee of Management. Consequently the first proposal would not be in order.

Under conditions, 10, 11 and 12 the powers vested in the Committee of Management are substantial. The position of this Committee cannot be relegated to that of an Advisory Committee without contravening the conditions of the trust. Consequently the second proposal would also be not in order.

3. In view of the changed circumstances and also of the inadvisability of maintaining this hospital as a separate unit at a heavy cost it would be desirable to evolve a scheme in consultation with the Nawab of Palanpur and the donor so that the institution may be attached to the Civil Hospital without losing the benefit of donation of one lac of rupees under condition 7. After this scheme is evolved the sanction of the Civil Court might be obtained.

Id/- P.M.L. 17/2

Remembrancer of Legal Affairs.

U.R. to L.S.G. & P.H.D. No.2152, dated the 20th February, 1950.

KAM/6-6.
4 c.

Office of the R.L.A.

Conversion of the Seth Ujamshi Pitambardas Ayurvedic College, Patan into an Ayurvedic Research Unit.

It appears that the Government of Baroda State accepted a donation of Rs.1 lakh in 1921 from Seth Ujamshi Pitambardas for the establishment of an Ayurvedic College at Patan on certain conditions, two of which were:

(1) Government should spend annually Rs.12,000/- on the college and if any balance was left out of this amount, it should be spend on the college only;

(2) If Government closed the college or stopped its contribution to it, then the donation of Rs.1 lakh was to be returned to the donor or his heirs.

This donation was subsequently increased to Rs. 2 lakhs in the year 1944 and Government's contribution to Rs. 36,000/- per annum. The Solicitors of the Managing Committee of Seth Ujamshi Pitambardas Ayurvedic College, Patan, have with the consent of the family of theDonor, approached Government with a request to convert the college into an Ayurvedic Research Unit to be attached to theMedical College at Baroda by transferring the endowment to the Baroda University, the main reason for the aforesaid proposal being that the Patan College, according to the report of the Indian Systems of Medicine Enquiry Committee, does not appear to have any future prospects unless it is bodily removed to Baroda. Secretary, H. & L.S.D., considers that as the proposal involves diversion of a trust, it cannot be done without the permission of the District Court, Baroda. The R.L.A. is requested to advise.

According to one of the conditions, subject to which the donation was accepted by the Baroda Government, if Government closed the college or stopped its contribution to it, the donation of Rs. 2 lakhs was to be returned to the donor or his heirs. Since the donor's family is agreeable to the new proposal of transferring the endowment to th

Ayurvedic Research Unit to be attached to the Medical College at Baroda; the question of reversion of the donation would not arise. Since, however, the proposal involves a diversion of the donation to a new institute called the Ayurvedic Research Unit, it can be done only by applying the donation cy-pres. "The property of a charitable institution which becomes extinct may be applicable cy-pres for the purpose of another institution with similar objects. But, however desirable it may be, in no circumstances can trustees of a charity apply the trust funds cy-pres on their own authority without the direction of a court or the Charity Commissioner" (see Halsbury's Laws of England, Vol. 4, page 222). Consequently, the view taken by the Secretary, H. & L.G.D. is correct and the permission of the Civil Court would be quite essential for the purpose.

Id/- P.H.L. 3/2

Remembrancer of Legal Affairs.

U.R. to L.S.G. &P.H.D., No.1547, dated the 3rd February 1960.

KAN/6-6.
4 c.

submitted.

These papers pertain to the transfer of the endowments and scholarships meant for the Matriculation Examination. The Bombay University intends to obtain the permission of the High Court to utilise the said endowments for University Examination other than the Matriculation. Almost all the endowments have two common conditions viz:-

1) The student must have been successful at the Matriculation Examination and

2) He must pursue a course of study in an institution recognized by or affiliated to the University of Bombay.

As students from all parts of the Prov. appeared for the Matriculation Examination and all Colleges in the Province were affiliated to the Bombay University, the benefits of these endowments were available to students throughout the Province. Since the establishment of the S. S. C. Examination & of the Regional Universities the position has been altered and the above said 2 conditions cannot be fulfilled. The question therefore arises whether the said awards should be on the result of the S.S.C.Examination until entrance examinations are established by the respective Universities. As Government intends to represent the interests of the students throughout the Province when the matter is taken to Court, E. D. want to decide upon the course of action which

Government should take. It is suggested that the Committee, which is to be set up to go into the question of reorganization of the Bombay University should be asked to make recommendations with reference to the question under consideration. The High Court would most probably accept the Committee's recommendations since it will be represented by all the Regional Universities. E.D. is of the opinion that, the Committees recommendations can even be given effect to by necessary legislation if there is an agreed solution. R.L.A. has been requested to advice, particularly with regard to the point whether Government can reasonably urge that the endowments should be available for students successful in the S.S.C. Examination and fulfilling the conditions of the endowments other than the condition requiring them to study at an institution recognized by the University of Bombay.

The endowments being made to the Bombay University for the purpose of giving scholarships and prizes each year to the successful candidates at the Matriculation Examination, fulfilling the conditions thereof, the Bombay University is in the position a trustee in respect of these endowments, since the 2 common conditions in all the endowments, (mentioned overleaf) can no longer be fulfilled, the permission of the High Court will have to be obtained under section 92 C.P.C. for diverting the trusts. The Court in granting such permission will apply the doctrine of cypres; "that is to say, the Court will carry out the testator's intentions into effect as nearly as the circumstances of the case will allow "(Levin on Trusts p. 473). When the endowments were made, the benefit extended to Matriculation students from all parts of the Province of Bombay.

The intention the donors will therefore be deemed to be that students from whole of the Province (new state) should be benefited. This cannot be disregarded. As the Matriculation Examination has been replaced by the S.S.C. Examination the natural inference would be that students successful in that Examination should get the benefits. Similarly since all the Colleges of educational institutions in Province are no longer

Civil Procedure Code, 1903 sec. 92.

Transfer of Scholarships and Endowments meant for the Matriculation Examination.

It is a well known principle of law that if charity can be administered according to the directions of the founder the law requires that it should be so administered Accordingly if the founder's directions can be exactly carried out, the Court will not allow any departure from them on the ground of expediency and if the main purpose can be effected independently of that which fails, the Court will allow the Trustees to disregard the particular directions which cannot be carried out and to give effect to the intention as far as possible. However, in the case of ancient charities there may be a change in the circumstances under which the charity is administered and the habits and needs of the class of persons whom it was intended to benefit with the result that although the original objects are physically capable of being carried out a rigid adherence to them would rather defeat than effectuate the real charitable intention of the founder. The recognition of this has led to a considerable modification in the case of ancient charities, of the principle stated above that where a trust is capable of being executed it cannot be altered and the jurisdiction cy-près arises because it is no longer possible beneficially to apply the property left by the founder in the exact way in which he has directed it to be applied and hence it can only be applied beneficially to similar purposes by different means. In such cases the Court will permit the mode of application to be altered if owing to the change in circumstances the directions of the founder with respect to a particular object, if persisted in, far from being beneficial would be detrimental to the objects he meant to benefit i.e. were to observe the letter of the gift would prevent

effect being given to its spirit.

In the present case when the various endowments came into existence the Bombay University was the only University catering for the needs of higher education in the whole Province and matriculation was an examination conducted by the Bombay University. With the establishment of several Universities and the substitution of the matriculation examination by the Secondary School Certificate Examination, it has certainly become necessary to consider the conditions attached to each endowment in the light of the changed circumstances.

Applying the principles referred to above, it will be necessary to determine the main purpose of each individual endowment, and to classify the endowments under the following three heads :-

(1) Endowments in which the object was to benefit the particular University as an institution irrespective of other considerations such as the territorial jurisdiction or as the body conducting any particular examination;

(2) Endowments in which the object was to advance the cause of higher education in the whole Province through the Bombay University who then happended to be the only University in the whole Province; and

(3) Endowments in which the object was to benefit the students in the whole Province appearing at a particular examination viz. the matriculation examination which then was being conducted by the Bombay University.

In case of endowments falling in (1) above no

change would be necessary while those in (2) and (3) would require modification of the conditions, if the real objects of the donors are to be carried out in spirit and not merely in letter.

As the matter requires careful consideration Secretary, E.D's proposal to set up a Committee consisting of the representatives of all the Universities and of the Secondary School Certificate Board would be ideal suggestion. If an agreed solution is reached there would be no difficulty in obtaining Court's directions in terms of the Agreement.

On an informal inquiry, it is ascertained from the Registrar of the BombayUniversity that no suit has so far been filed in theHigh Court although the University's Solicitors have been instructed to take steps in the matter. Such a suit would require the Advocate General's sanction under section 92 of the Civil Procedure Code. In case the BombayUniversity turns down the proposal to set up a Committee the Advocate General may be requested to grant the sanction only after hearing the representatives of all the Universities and of the Secondary School Certificate Board, and in case of disagreement permit all the parties to place their views before the Court.

Id/- P.M.L. 1/3

Remembrancer of Legal Affairs.

U.R. to E.D. No.2984, datedthe 2nd March 1950.

KAN/6-6.
4 8.

L.D.R.I. No.5193 dt. 25-3-50.

Submitted.

These pps. pertain to the proposal to grant recognition to the Sangli Nagar Vachanalaya as a Dist. Library for the Satara South District for a period of 2 yrs. in the first instance. The Curator of libraries, Bombay proposes that before granting recognition, a term should be inserted in the agreement to the effect that when a private body agrees to accept Govt. help it surrenders its right of private possession and agrees to regard the property as a trust to be administered in conformity with the accepted statement of its aims and objects. He has suggested that the Collector of Satara-South should be asked tohand over books in his possession to the Sangli Nagar Vachanalaya if recognition is to be grantedto it.

R.L.A. has been requested to advise in the matter. It is not very clear on what points R.L.A's advise is sought. Besides as these papers relate to a state institution, they should have been forwarded through Sp. Officer (P. & S.D.) E.D. may be informed that the pps. should be shown to Spl Officer, P. & S.D.& in the first instance and then forwarded to R.L.A. if necessary, after stating the exact point on which his opinion is required.

Id/- S.B. 29/3

A.L.R. Reply may be:- When a private body agrees to accept help from Govt. it would not necessarily be deemed to be a public trust. Before any grant or loan of Govt. books is made to the district libraries, it appears, necessary to stipulate a condition that such library should be thrown open to the public & in the event of its closure the books may be waved/Govt. should be surrendered.

Id/- R.T.K. 30/3

KAN/6-6.
4 c.

Solicitor may please note on this. I think we should follow, if possible the model of the Central Library.

Id/- P.M.L. ~~xx~~ 30/3

Solicitor

The model of the Central Library may not be appropriate in this case as the grants is to be given for a limited period only viz., ~~x~~ 2 years.

In case of recurring grants same procedure as in case of educational institutions may be prescribed.

Under the new bill charity Commissioner will have jurisdiction over registered societies. We may insist that the Libraries seeking benefit of Govt. grant should in the first instance get it~~/xxxxx~~ self registered under the Societies Registration Act.

Id/- H.D.H. 6/4

U.H. to E.D. No.6939 dated 1-6-50

File C Charities/50.

KAH/7-6.
4 c.

Office of the R.L.A.

Recognition of the Gangli Nagar Vachanalaya.

When a private body agrees to accept help from Government, it would not necessarily be deemed to be a public trust. Before any grant or loan of Government books is made to the district libraries, it appears necessary to stipulate a condition that such library should be thrown open to the public and in the event of its closure the books loaned by Government should be surrendered.

As regards ~~xxxxx~~ cash grants the provisions of condition 14 may be found difficult to enforce in practice. Perhaps rules and procedure similar to the grant-in-aid Code for schools and Colleges may be adopted.

Ig/- P.M.L. 29/4

Remembrancer of Legal Affairs.

U.R. to E.D., No. 5039, dated the 1st May 1950.

KAN/7-6.
4 c.-

Submitted.

2. For the facts of the case, please see H. and L.G. Department note at pages 19-26 ante.

3. In his un-official reference dated 6.3.1950, the Surgeon General with the Govt. of Bombay states that it would not be feasible to build separate blocks of buildings exclusively for the small number of Parsi ~~indi~~ patients, male, female or children in the new building of the civil hospital to be constructed at Ahmedabad; and points out that the only course feasible for Govt. would be to reserve an equivalent number of beds for Parsi patients in the general wards or have small special wards in the main buildings in order to meet the original intention of the donors so far as Parsi patients are concerned. He further suggests that a suitable tablet may, if necessary, be put on those beds or wards, as the case may be, to commemorate the name of the donor. R.L.A. has been requested to advise whether the course suggested by S.G. is legally feasible and if so what action should be taken in the matter.

4. "The primary rule governing the execution of charitable trusts is that the intention of the donor must be observed. If the charity can be administered according to the directions of the founder, the law requires that it should be so administered. When the donor's directions can be exactly obeyed the court will not allow any departure from them on grounds of expediency. The court will not vary and modify existing charity trusts so as to meet its own view with regard to what it may think most beneficial and for the general ad- ~~mini~~ vantage of the public. (See Tudor on Charities, pp.

146-47). In his opinion No.7199, dated 30.7.1946 R.L.A. has advised that it would be possible to move the court to get the terms of the trust-deed changed so as to throw open the wards reserved for Europeans on the ground that the Donor's direction in the trust-deed has become impracticable for want of sufficient number of beneficiaries; but it was further observed that so far as Parsees were concerned, there was no material on which an application could lie to the court for the amendment of the trust deed. On a further reference as to whether if the Civil Hospital is reconstructed on a new site Govt. would be still bound to maintain a separate maternity hospital out of the donation, R.L.A. has opined that with the sanction of the court Govt. will have to make some provision in the new civil hospital so as to conform to the intentions of the donor. Govt. will not be relieved of its obligation to provide suitable accommodation for the Parsees until and unless it is proved that it is impossible or impracticable on the part of Govt. to comply with the directions of the donor. If rigid adherence to the original objects would defeat rather than effectuate the real charitable intention of the founder, then alone a departure from the intended path would be justifiable. "The court proceeds with the utmost caution in directing the alteration of an scheme; and it will not do so at all except when the most substantial grounds and upon the clearest evidence not only that the scheme does not operate beneficially but it can by alteration be made to do so consistently with the object of the foundation."(Ibid p. 190). It is true that altered circumstances would be a ground for alteration of schemes,, but that will not be helpful

in the case under consideration. If a trust is capable of being executed in the manner provided by the author of the trust, it will not be within the powers of the trustee to vary it so as to make it more beneficial to the community at large. The interest of the beneficiaries must be the guiding principle in such cases.

Consequently the proposal of the Surgeon General to accommodate Parsee patients in General wards of the new civil hospital would be legally feasible in as much as it goes contrary to the intention of the donor as expressed in clause 7 of the Indenture. The other alternative namely to provide small special wards would be, however, worth-considering, as it would be treated as a substantial compliance with the original intention of the donor and for that purpose an application will have to be made to the court for getting the requisite sanction.

Sd/-

A.L.R. Reply may be:-

The reservation of a small ward in the new hospital for Parsis would conform to the wishes of the donor & is likely to be sanctioned by the Court.

Id/- R.T.E. 14/6

R.L.A Id/- P.M.L. 14/6

U.R. to L.S.G. & P.H.D. No.8191 d/ 16-6-1953

KAN/7-6.
& C.

L.D.R.I.No.8233 dt. 31/5/50

Submitted.

In 1944, one Shri Deshpande deposited Rs.500/- with the Karbhari of the Kapashi Jahagir, Kolhapur in trust for the award of a scholarship of Rs. 18 per annum in the boys school and another of Rs. 12/- per annum in the girls school in Kapashi, Dist. Kolhapur. The said sum has not however been utilised for the above said purpose and is in the deposit accounts of Shri Deshpande. The latter now requests that the amount of Rs.511/13/3 may be refunded to him as Kapashi Jahagir has merged with Bombay State and the amount has remained unutilised upto now.

The D.P.I. is of the opinion that the amount cannot be refunded to Shri Deshpande and should be transferred to the D.E.O., Kolhapur which will purchase Govt. securities of Rs. 500/- and utilise the amount of interest thereon for 2 scholarships. Education Deptt. agrees with the view taken by the D.P.I.

Legal Deptt. has been requested to advise whether the donor has any legal claim on the amount and if not whether it cannot be utilized in the manner indicated by the D.P.I.

Reference to sec. 2 of the Charitable Endowments Act, 1890 will show that a trust for education would be a trust for a charitable purpose. Hence the donation of Rs. 500/- made by Shri Deshpande will be deemed to have been held by the Karbhari of the Kapashi Jahagir

in trust for charity. Once a charitable trust is accepted it cannot fail. No doubt the circumstances have changed but this does not mean that the trust fails. The charitable intention will not suffer to be defeated by negligence or default on the part of the trustees. Thus though the Kharbhari of the Kapashi Jahagir committed a default by not utilising the money for the object proposed by the donor, the latter will have no clai to the money. Once the trust is created, the money vests in the trustee for the benefit of the cestui-que trust, who can claim to have the trust executed. Besides, even if a charitable trust fails there cannot be a resulting trust in favour of the donor. In the present case, the money has not yet been utilised for the proposed objects but it can yet be so utilised. As the Kapashi Jahagir has merged with the Bombay State, the best course would be to seek the directions of the Court under sec. 7 of the Charitable & Religious Trusts Act, 1920 for transferring the amount of Rs. 500/- to the D.S.B., Kolhapur for establishing 2 scholarships, one in the boys school and another in the girls school at Kapashi.

It is not clear why the excess amount of Rs. 44/13/3 remained with the Kharbhari even though the donor intended to give only Rs. 500/- for the purpose of the scholarships. If this excess is still there, it should be refunded to the donor as it is not subject to the trust.

Id/- S.B. 19/6

A.L.R. Reply may be:-

The donation having been accepted by the Kapashi Jahagir and the trust being capable of execution, the donor would not be entitled to claim reversion of the trust. In view of the merger of the Kolhapur state along with the Kapasi Jahagir, the trust vests in Govt, and with the sanction of the Court the District School Board, Kolhapur can take over the administration of the trust.

Id/- R.T.K. 20/6

KAH/2-6.

Reply Solicitor may also see Id/- P.M.L. 20/6

4 6.

Office of the R.L.A.

Charitable Endowments Act, 1890.

Donation for giving scholarships in the boys and girls schools, Kapashi.

The donation having been accepted by the Kapashi Jahagir and the trust being capable of execution the donor would not be entitled to claim reversion of the trust. In view of the merger of the Kolhapur State along with the Kapashi Jahagir, the trust vests in Government.

2. The officer who holds the amount at present may apply to the Court as the administering person under the Charitable Endowments Act, k 1890 to vest the same in the Treasurer of Charitable Endowments and to have a scheme settled for the administration of the funds.

Id/- P.M.L. 27/6

Remembrancer of Legal Affairs.

U.R. to E.D.No.3873, dated 20th June 1960.

KAE/7-6.
4 c.

9582
6/6/50.

Submitted with reference to L.S.G. & P.H.D. O.M. at p. 27 ante. Please see H.L.A's opinion No.1547, dated 3/2/1950 at pp.9-11 ante in which the H.L.A. had expressed the view that the proposal of transferring the endowment attached to the Seth Ujamshi Pitambardas Ayurvedic College, Patan, to the Ayurvedic Research Unit to be attached to the Medical College at Baroda would involve a diversion of the donation, and it would be necessary to obtain the permission of the Civil Court for such transfer. Messrs. Jhevery & Co., Solicitors of the Managing Committee of the College at Patan, invite attention to the objects specified under Pt. VI at p. 27 of the booklet issued by the Govt. of Baroda and contend that the object of the trust is two-fold, that as one of the purposes is being abandoned as impracticable, there is no diversion of the trust and therefore ~~because~~ it is not necessary to obtain the permission of the Court. The H.L.A. is requested to advise whether the above view of the Solicitors is correct.

2. It is true that the rules in Pt. VI of the booklet containing the short history of the Patan Ayurvedic College mention the following two-folds object, viz :-

(a) Imparting Ayurvedic education with the help of modern scientific methods, and

(b) Research in Ayurveda.

According to the report of the Kodh Committee the Ayurvedic College at Patan has no future prospects unless it is removed to Baroda. The proposal now made is to convert the College into an Ayurvedic Research unit to be attached to the Medical College at Baroda. This proposal will also affect the intention of the donation for one of the conditions attached to the grant(as can be seen from Shri Ujamshi Pitambardas' letter dt. 28-8-1920 at pp.1-2 of the booklet) was that the College should be established at Patan. The present proposal, as pointed out in R.L.A's opinion No.1047, dated 3/2/1950, would involve the diversion of the donation to a new institute viz. the Ayurvedic Research Unit. Though the object may be similar the institution will be different. Consequently the doctrine of cypres will be attracted and permission of the Civil Court will be necessary. In order to apply that doctrine, the Court should be satisfied that the original object cannot be carried out in the manner and form intended by the donor (I.L.R.32 Bom. 214-Chitale's C.P.Code Vol.I, p.733). The view expressed by the solicitors in their letter dt. 30/5/1950 does not appear to be correct.

Id/- D.W.D. 7/6

A.L.A. I agree. Reply may be as in para 2 of Mr. Dis note

Id/- R.T.K. 8/6

R.L.A. R.L.A. has desired me to note on this.
The relevant conditions on which the Baroda Govt. accepted the donation were:-

1) The institution should always be conducted at Patan and

2) if the institution at Patan is closed down the amount of donation should be returned to the donor or his heirs.

Reading these conditions with the objects refered to by M/s. Jhaveri & Co,s transfer of the institution from Patan to Baroda would amount to variation of the trust if not the ~~diversion~~ diversion of the trust funds.

RAN/7-6.

:4 e.

However condition (2) shows that there was no general intention on the part of the donor and in hence there is no question of the application of cy-pres doctrine. The reason is that if the particular mode of application prescribed by the donor was the essence of his intention, there is nothing left upon which the Court can found its jurisdiction of that mode is or becomes incapable of being performed so that in such circumstances the Court has no power to direct any other charitable applications in the place of that which has failed.

Since the persons who are entitled to the reversion have consented to the variation, it does not appear necessary to apply to the Court unless the Committee's decision is likely to affect other donations made with general charitable intention.

Id/- R.B.H.

RAH/7-6.
4 C.

Office of the R.L.A.

The contention of the Solicitors Jhavery & Co., does not appear to be correct. Both othe objects were to be accomplished by the institution at Patan, and the whole compilation relating to the establishment of this Trust shows that it was to be executed at Patan. When it is proposed to close the institution at Patan and to transfer the endowment to the Baroda University for an institution to be established at Baroda, the case would amount to one of a charity which has become defunct, and in such cases the funds have been applied by Courts cy-pres. See Tudor on Charities, 5th edn. p.159; and Spiller v. Maud, 32 Chancery Division, 158 foot-note, where the Master of the Rolls treated the whole fund as charitable, but held that the particular charity had failed and proceeded to apply the fund cy-pres. In any case it would be safer to take directions of the Court if it is proposed to bid Government to continue to an institution at Baroda the contribution which was originally intended for the institution at Patan.

Id/- P.M.L. 7/7

Remembrancer of Legal Affairs.

U.R. to L.S.G. & P.H.D. No.9576, dated 8th July 1950.

KAH/7-6.
4 c.

Office of the R.L.A.

Baroda University Act: Amendment of section 18 of -

The question for the consideration of the R.L.A. is whether on the transfer of the donation attached to the Ayurvedic College at Patan to the Ayurvedic Research unit to be attached to the medical College at Baroda the heirs of the donor would get the right to nominate a fellow under sub-paragraph (ii) of paragraph B, under the heading "Class II - Ordinary Fellows" in section 18 of the Baroda University Act as proposed to be amended.

2. Under sub-paragraph (ii) of paragraph B as proposed to be inserted in section 18 of the B.S.Baroda University Act the right to nominate a fellow on the Senate is given to an individual, firm, association or trust giving to and for the purposes of the University a donation of money or other property of the value of not less than one lakh of rupees. In his two opinions recently given by the R.L.A. in regard to the diversion of this donation the R.L.A. [illegible] has expressed the view that the case amounts to one of a charity which has become defunct and advised the necessity of obtaining directions of the Court for application of the gift cy-pres. Presuming the Court grants such permission the donation will no doubt be under the control of the Baroda University. But it seems doubtful whether in that case the donation can be said to have been given to or for the purpose of the University. If it is intended to bestow this right on the heirs of Seth Ujamsh Pitamberds paragraph B will have to be revised.

Id/- P.M.L. 31/8
Remembrancer of Legal Affairs.

U.R. to L.S.G. & P.H.D. No.12515, dated 31st August 193[illegible].

EAM/7/6.
4 c.

Office of the R.L.A.

The Jacob Sassoon European General Hospital, Poona.

Possibility of applying to Court for throwing open the beds reserved for Europeans to the General Public.

R.L.A's opinion No. 839, dt. 24-1-1949.

It appears from the statement accompanying the letter of the Civil Surgeon, Poona that not a single European patient was treated in the Jacob Sassoon Hospital during the year 1949. The European General has proposed that only 2 beds (out of 32 beds originally reserved for Europeans) should be made available for Europeans and the remaining beds should be thrown open to the general public. The papers have been forwarded to Legal Department for further advice and necessary action.

It is apparent from the facts stated above that there is no possibility of the Europeans taking benefit of the trust. It would therefore be open to Government to apply to the Court for a direction that the Jacob Sassoon European General Hospital, (excluding the 10 beds for Jews) may be thrown open to the general public on the ground that the donor's direction has become impracticable for want of a sufficient number of European beneficiaries (see R.L.A's opinion No.7199, dated 30-7-1948). On papers being transferred to Legal Department the District Government Pleader, Poona, will be ~~ma~~ instructed to initiate legal proceedings for the purpose.

Sd/- P.H.L. 6/4

Remembrancer of Legal Affairs.

U.S. to L.S.G. & P.H.D., No.1766, dated the 6th April 1950.

K/M/7-6.
4 6.

Office of the R.L.A.

The P.W.D. considers that sometimes those who offer free gift of land and/or labour for the construction of village approach roads back out later on and with a view to hold them to their promise it is proposed that the Executive Engineer should make it clear to the signatories that the offer made by them would be recovered from them by Government as arrears of land revenue or by any other means that may be decided by Government in the matter. R.L.A. is requested to advise whether this kind of statement taken from them would be legally in order and also to suggest ways by which these offer made by the people can be legally recovered by Government in case they back out from it.

A mere promise to give to charity is a nudum pactum and cannot be enforced (p. 55, Tudor on Charities, 5th edition). However, a promise of a subscription to public or charitable object becomes a legal promise and enforceable by the promoters as soon as any definite steps have been taken by them in furtherance of the object and on the faith of the promised subscriptions. See Kedarnath v. Ghori Mohammed I.L.R. 14 Calcutta 64, and The District of Ramnad v. Mohammed Ibrahim (A.I.R. 1933 Madras 524) At the same time a promise to pay a subscription in order to meet a liability already incurred is not enforceable as in such a case it could not be said that there was any request by the promisor to the promisee to do something in consideration of the promised subscription: Doraswami v. Arunachala (A.I.R. 1936 Madras 135). It is clear from these decisions that if an agreement is taken from prominent villagers that they would make a free gift of land or pay any subscription for the construction of village approach roads, and if on the faith of it Government has actually taken steps

and incurred expenditure thereon and if those villagers do do not make good their promise though called upon by Government, it would be possible to enforce their promise in a court of law. Promise to provide labour may be hit by Article 23(1) of the Constitution of India which prohibits forced labour. Consequently, in any agreements to be taken from these villagers it would be desirable to state the money value of labour as promised by these people instead of a promise to provide labour. A regualr agreement instead of statements from these villagers would be necessary if their promises are to be enforced; and such agreement may contain the clause that in the event of default the sum will be recoverable as one arrear of land revenue.

Id/- P.H.L. 3/7

Remembrancer of Legal Affairs.

U.R. to P.W.D. No.9345 , dated, 4th July 1950.

KAH/7-6.
4 C.

L.D.S.I.No.18045, dated 31-10-50.

Submitted with reference to A. & F.D. note at page 15 ante

2. It appears that the former Baroda Government had accepted a donation of Rs. 50,000/-, in the year 1936, from one Mrs. Jasumati D.Parikh for starting the Agricultural School, Baroda, subject to certain conditions, one of them being that the school should be named "Sheth Dosabhai Maganlal Institute of Agricultural Education." The former Baroda Government had respected this condition. After the merger of the State the school has been taken over by the Agricultural department of the Bombay Government. The question now raised for the consideration of R.L.A. is whether it is incumbent on this Government to comply with other conditions of the Baroda Government Order, especially condition No. 3, which provides that one representative of the donor would be on the Board of Management to be appointed for the institute.

Mrs. Jasumati D.Parikh had donated the sum of Rs.50,000/- in memory of her deceased husband Sheth Dosabhai Maganlal and it was accepted by theformer Baroda Government with the conditions mentioned in para 1 of the Scheme framed for the working of the institute. After the merger of the Baroda State with Bombay Province, the enactments and the orders, rules, notifications etc. issued thereunder were extended to the State territory and the corresponding enactments and rules and orders issued thereunder in force in the State were repealed. However such repeal has not affected the validity of anything already done or suffered or any right, obligation or liability already acquired, accrued or incurred in respect thereof. When the Bombay Government took over the management of theinstitution after the merger of the State, they must be deemed to have entered

in the shoes of the former authorities, thereby making itself liable for the enforcement of the conditions subject to which the donation was accepted. The acceptance of the donation by the former Baroda Government placed itself in the position of a trustee and the "breaking down of the particular trust machinery will not defeat the gift." "The incapacity of the trustee will similarly not defeat the trust". (pp. 138-39 Tudor on Charities). "It is a fundamental principle of the law of charities which has been established for centuries that whenever a clear intention to devote property to charity is shown, effect must be given to it".

"It is the duty of trustees of charities as it is of all trustees to get in and protect the properties entrusted to their charge and in all things to execute the trusts in strict accordance with the instrument of foundation or the scheme by which the charity is regulated." (ibid p.244). It is the bounden duty of a trustee to obey the directions of the author of the trust given at the time of its creation in so far as it is practicable to do so. Consequently, even though the Bombay Government is not legally bound to respect the conditions of the donation accepted by the former Baroda Government, yet on equitable grounds, it would be necessary to appoint one representative of the donor on the Board of Management of the Institute. Otherwise an application will have to be made to the Court for the variation of the scheme in order to relieve this Government of the liability of respecting the original conditions of the donation.

Sd/- 21/10

A.L.S.

Resubmitted.

2) A similar case dealt with by Shri Chitnis has been submitted to-day for signature. It draft reply is put up at Slip A below.

Id/- 1/11

A.L.S. A similar reply may be given in this case also.

Id/- R.T.K. 1/11

R.L.A. Id/- P.M.L. 3/11

RAH/7-6.
4 c.

Office of the R.L.A.

Condition (c) does contemplate a Board of Management. Consequently it would be necessary to appoint a Board of Management of the School at least nominally without substantial powers.

Id/- P.M.L. 4/11
Remembrancer of Legal Affairs.

U.R. to A. & F.D., No.15531, dated the 6th November 1950.

KAN/7-6.
4 c.

Legal Department.
H.I. No.19692/27-10-50

Submitted.

It appears that Sheth Motilal Mielchand of Patan had donated a sum of Rs.65,000 to the Ex Baroda State Govt. for running the school for boys at Patan (in the Ex.Baroda State) on conditions laid down in the letter dated 7-3-1911 addressed to the Dewan of Baroda State at page 181/c. The question of transferring the said school to a suitable private Body has now arisen. Two privates bodies viz. the North Gujarath Yuvak Mandal, Patan and the Jain Mandal, Patan, have offered to take over the management of this school. With the concurrence of P.W.D.** and F.D.* and with the approval of H.C.H.* it was proposed to hand over the management of the school to North Gujarath Yuvak Mandal, and under the Ed. Deptt. letter dt. 1-6-50 at p.117/C the Mandal was informed accordingly and was asked to make efforts to raise its existing fund of Rs.33,000 to Rs.50,000. In the mean time the Jain Mandal of Patan, whose request for taking over the management of the said school had been previously ruled out of consideration on the ground that its membership was open to Jains only, has now re-approached Govt. to reconsider its request on account of its changed constitution which admits any person of age of above 21 years to its membership without any distinction of caste and creed. The H.D. in its note dt. 19-10-50 appears to support the Govt's previous decision to transfer

** P.8 ante.
* P.10 ante.
* P.6 ante.

PP.20-22 ante.

the school to the North Gujarath Yuvak Mandal.

R.L.A. is however requested to advise.

By accepting the donation of Rs.65,000 from Sheth Motilal Nielchand for building and equipping a high School at Patan, the former Baroda Govt. had assumed the position of a trustee. As such it would be the duty of that Govt. to execute that trust in strict accordance with the instrument of foundation of the scheme by which the charity is regulated (Tudor on Charities, p.214). The same duty is devolved upon this Govt. on merger of the Baroda Govt. According to condition (2) mentioned by the donor in his representative's letter dated 7-3-41, the school is to be managed by the Govt. only and now if Govt. desires to hand over the management of the said school to a private body the consent of the donor to such transfer is necessary. According to the recitals of the letter of the donor's representative dated 6-10-50, it appears that the donor has arrived at an agreement regarding the management of the school by the Uttar Gujarath Yuvak Mandal and has also agreed to donate a further sum of Rs.25,000/- to that mandal. Further by subsequent letter dt. 17-10-50 the conditions mentioned in his letter dt. 7-3-41 are superseded by letter dt.6-10-50. Thus since it is the desire of the donor to transfer the management of the said school to the Uttal Gujarath Yuvak Mandal there is no legal objection in so transferring the managements of the said school to that Mandal. As such the papers may be "seen and returned" agreeing with the proposal of the E.D.

*p.181/C.

*p.198/C

*p.199/C

Sd/- V.R. Chithis 7/11/50
A.L.O.

Reply may be:- Seen & returned

In view of the donor's letters at pp. 195-97 ante there appears no legal objection to transferring the school to the Uttal Gujarath Yuvak Mandal.

Id/- R.T.K.
R.L.A. Id/- P.M.L. 8/11

U.R. to E.D. No.15316 d/ 18-11-50

KAN/7-6.
4 6.

L.D.H.I. No.16321
dated 28-3-50.

Submitted with reference to thenote of the L.S.G. & P.H. Department at 10 ante (Botton)

The Local Finance Enquiry Committee, Simla, has enquired in their letter, dated 5-2-50 at p. 7 ante, whether the trust funds under the Charitable Endowments Act, 1890, can be used for the purposes of Local Bodies such as Elementary Education, Public Health and Sanitation etc, etc. Section 6 of the Charitable Endowments Act, 1890 provides for settling a scheme for administration of any property, which has been vested in the Treasurer of Charitable Endowments under the Act. There is no provision in the Act under which Local Bodies can derive any financial assistance for education and Sanitation etc, purposes.

The view taken by the L.S.G. & H.P.Dept. is correct.

Sd/- J.S. Bindra 6/10/50
A.L.H.

Ac at A

Id/- S.T.A. 6/10

Charity Commissioner may please see. as he is also a member of the Committee.

Id/- P.H.L. 6/10

Charity Commissioner

Under the Charitable Endowments Act 1890, the endowments vested by Govt. in the Treasurer of Charitable Endowments are applied to Charitable purposes agreed upon by the Govt. and

the persons creating and administering the endowments. There is nothing in the Act to preclude the creation of such endowments for the benefit of local bodies or institutions (educational medical & others) run by them ——————— if the Settlors so desire. However, diversion of the existing endowments for the benefit of local bodies or their institutions is not possible excepting on the basis of the doctrine of cy-pres & that too only by the order of the Court.

Id/- A.D.M. 6/10

R.L.A. Reply as noted by C.C.

Id/- P.M.L. 6/10.

U.R. to L.S.G. & P.H.D. No.14358 dt.12-10-60

File C Charitable Endows./60.

KAN/7-6.
4 c.

The donation having been accepted cannot ~~have~~ be returned to the donor even though he is willing. Since the Supdt. of the Agri. School, Devihosur is in possession of the funds he may apply to Govt. under section 4(1) of the Charitable Endowments Act, 1890 for vesting the funds in the Treasurer of Charitable Endowments and for framing a scheme for the administration thereof in accordance with the wishes of the donor.

Id/- H.T.K. 29/11

H.L.A. Id/- P.H.L. 30/11

U.R. to A. & F.D. No.17373 dt. 7-12-30.

KNR/7-6.
4 e.

Seth
College of Engineering at Ahmedabad.

Donation by Seth Kasturbhai Lalbhai.

Seth Kasturbhai Lalbhai was himself a member of the Dalal Committee. At page 10 of their report, the Committee stated that they attached at appendix IV, a list of the existing equipment at the Engineering College, Poona supplied to them by Professor Taraporvala (now Joint Director of Technical Education) together with the book value of the different items. The Committee included in appendix IV the library as part of the equipment; and gave the total number of volumes therein with an approximate cost of Rs.75,000/-. It is thus apparent that Seth Kasturbhai Lalbhai was fully aware that a library was an integral part of the equipment of the Engineering College as proposed by the Dalal Committee. In his original letter dated 22-4-1947 by which he made the offer for the establishment of the Engineering College at Ahmedabad, he makes reference to the recommendations of the Dalal Committee. Para 3 of that letter reads as follows:-

> "That the buildings will be put up and equipment will be provided by us, according to plans and specifications approved by the Government and we shall hand-over the same to the Government. The Government will bear half the actual costs of such buildings and equipment."

This paragraph makes it clear that the donor was to provide not only the buildings but the equipment. At no stage during the negotiations leading to Government reply dated 27-5-1947 was it ever suggested that the library was to be excluded from the equipment which the donor was to provide. Para 2 of Government's reply dated 27-5-1947 merely clarifies the position in respect of buildings and does not

affect the question of equipment. On the other hand para 4, reiterates the position regarding the donor's liability for equipment. The draft trust-deed also confirms that position. The gist of the arrangement was that the donor was ~~[illegible]~~ to set up a fully-fledged College not only by constructing the buildings as described in Government's reply but by purchasing the equipment; and there is no suggestion anywhere that any articles such as books etc. for the library were to be the special liability of Government. A library is as much part of the equipment of an Engineering College as other technical equipment; and there is no reason to cut down the plenitude of the meaning of the term "equipment" as used in this context. Government would therefore be justified on existing that Seth Kasturbhai should share the expenditure necessary for providing the library.

Sd/- P.N.L. 13/11

Remembrancer of Legal Affairs.

U.R. to E.D. No. 16098 dated the 14th November 1950.

KAN/7-6.
4 c.

Under the scheme for administration framed under section 5 of the Charitable Endowments Act, 1890 only the income of the investment can be expended and not the corpus. The proposal now made by the Chairman, E.E.H. Hospital, Poona, involves the expenditure of the corpus itself, which would not be lawful unless the scheme is modified under section 6(2) after an application is made by the persons acting in the administration of the trust under section 6.

Id/- R.T.K. 11/10

R.L.A. Id/- P.M.L. 12/10

U.R. to L.S.G. & P.H.D. No.14446 dt. 14-10-30

K.M/7-6.
4 c.

Office of the R.L.A.

Grant-in-aid St.George's H.N.A.- Claim to accumulations of -

It appears that the Indian Red Cross Society, Bombay Presidency Branch made a gift of 'Bianchi Ambulance' to the St. George's Hospital, Bombay, which was accepted by the Surgeon General. By Government Resolution, Revenue Department, No. 4681, dated the 5th June 1924, Government allowed the St. George's Hospital Nursing Association to maintain the Bianchi Ambulance on the following conditions:-

(i) Government sanctions a grant-in-aid of Rs.1,500/- per annum for the up keep of the motor ambulance car maintained by the Association from its own funds.

(ii) The Association is allowed to retain the receipts from the fees charged to patients for the use of the car.

By Government Resolution, Revenue Department, No.4681, dated the 11th June 1944, the ambulance was taken over by Government from the Association and the orders regarding the grant-in-aid to the Association for the maintenance of that car were cancelled. From the Annual Report of the Association for the year 1944-45, it appears that the Association has accumulated a balance of Rs.13,000/- and odd as its Ambulance Fund. The question raised for R.L.A's consideration is whether Government can claim this Ambulance Fund from the Association.

2. It is true that grants-in-aid are made to private bodies and associations to cover annually the deficit between the income and the expenditure, but once such grants are made unconditionally they vest in the grantee and Government would not be able to claim refund thereof or any balance of it. In the present case, the grant-in-aid of Rs.1,500/- was made to the St. George's Hospital Nursing Association only for the purpose of enabling it to maintain the ambulance car. That Association accordingly, did maintain the ambulance car. Consequently, it would not be competent for Government to claim any refund or the balance of that grant-in-aid. Further, the Ambulance Fund of the Association has accumulated out of the grants-in-aid made by Government and the fees charged to the patients for the use of the car. Government can have no claim to the balance of fees charged to the patients. For these reasons Government can have no legal claim to the Ambulance Fund of the St. George's Hospital Nursing Association.

Id/- P.M.L. 27/2
Remembrancer of Legal Affairs.

KAN/7-6.
4 c.

U.R. to H.S.G. & P.H.D.-7 No.18310, dated the 28th Dec. '50.

Office of the R.L.A.

As stated in the Baroda Government Huzur Order No.(12)61/21 dt. 10-12-42 the donation of Rs.100,000/- (one lakh) appears to have been accepted by the Baroda Government subject to the express condition that the Baroda Government will conduct and maintain the institution permanently. If so, it would not be legally feasible for Government to transfer ther institution to the Navsari Kelvani Mandal for management save with the consent of the donor.

Id/- P.M.L. 7/12

Remembrancer of Legal Affairs.

U.R. to E.D. No.17482, dated the 8th December 1950.

KAN/8-6.
4 c.

A.L.R. Reply may be:-

Under rule 3 of the Rules for the management of the Maternity Home, Savanur the Nawab of Savanur has power to appoint the Managing Committee and that power can now be exercised by Govt. Power to appoint includes power to dismiss or dissolve. Consequently it would be competent for Govt. to dissolve the present Managing Committee and to appoint the Hospital Committee to manage the Funds until a scheme is settled under the Charitable Endowments Act, 1890.

Id/- R.T.K. 27/11

Solicitor may also see note.

Id/- P.M.L. 27/11

U.R. to L.S.G. & P.H.D. No. 18322 dt.28/12/1950

KAR/8-6.

4 c.